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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND TAYLOR,

Defendant and Appellant.

E047954

(Super.Ct.No. RIF138848)

OPINION

APPEAL from the Superior Court of Riverside County. Byron K. McMillan, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed with directions.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch, Deputy Attorney General, for Plaintiff and Respondent.

I

INTRODUCTION

On January 22, 2009, a jury found defendant and appellant Raymond Taylor guilty of attempted murder under Penal Code¹ sections 664 and 187 (count 1); assault with a firearm under section 245, subdivision (a)(2) (count 2); and (3) possession of a firearm by a felon under section 12021.1, subdivision (a) (count 3). The jury also found true that (1) during the commission of the attempted murder, defendant personally discharged a firearm causing great bodily injury under section 12022.53, subdivision (d), and personally inflicted great bodily injury under section 12022.7, subdivision (a); and (2) during the commission of the assault with a firearm, defendant personally used a firearm under section 12022.5, subdivision (a), and personally inflicted great bodily injury under section 12022.7, subdivision (a).

On March 6, 2009, the trial court found true: the strike prior allegation under sections 667, subdivisions (c), (e)(1), and 1170.12, subdivision (c)(1); the prior serious felony conviction allegation under section 667, subdivision (a); and two prior prison term allegations under section 667.5, subdivision (b). Thereafter, the trial court sentenced defendant to an aggregate doubled three strikes sentence of 42 years to life.

On appeal, defendant contends that the trial court erred in imposing both a prior serious felony conviction enhancement and a prior prison term enhancement based on a single conviction. For the reasons set forth below, we agree with defendant.

¹ All statutory references are to the Penal Code unless otherwise specified.

II

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, Teron Brown was married to defendant's sister Cheere. In December, Brown loaned defendant \$400 to purchase a car; defendant promised to repay the \$400 loan plus \$100 interest from defendant's tax refund. When defendant failed to repay the loan after four months, Brown gave defendant one week to repay the loan or Brown would take the car.

On March 27, 2007, Brown arrived at the home of defendant's mother to retrieve the money or the car. Defendant told Brown that he did not have the money, but that Brown could not take the car since the battery had been removed. After purchasing and installing a new battery, Brown drove the car onto a trailer and towed it home. Because Brown needed the car's title and other paperwork to finalize a pending sale of the car, Brown returned to defendant's mother's home for the missing paperwork. Defendant was not there, but Brown saw defendant later that day outside another house in the area. Brown stopped to talk with defendant; an argument ensued. During the argument, Brown told defendant, "[r]eal men take care of their businesses, and bitches don't." Defendant replied that he was "not a bitch."

Brown told defendant to get the paperwork. Brown then turned and started to walk away when he was shot in the shoulder. Brown stumbled and then ran; he heard more gunshots. Brown ran toward defendant's mother's house, which was nearby. As Brown did so, he turned to see defendant. Defendant told Brown, "I'm not the bitch.

Now who's the bitch?" At this point, defendant's brother, who was in the house, called 911. Brown was eventually taken to the hospital.

Defendant later told his girlfriend that he had shot Brown after Brown called him a "bitch."

III

ANALYSIS

Defendant's sole contention on appeal is that the trial court erred in imposing both a prior serious felony conviction enhancement and a prior prison term enhancement. Specifically, defendant argues that since the trial court imposed a prior serious felony conviction enhancement for the 2003 robbery conviction under section 667, subdivision (a), the court could not also impose a prior prison term enhancement under section 667.5, resulting from the same 2003 robbery conviction. Defendant, therefore, requests that we modify his current 42-years-to-life prison sentence to 41 years to life, by striking the one-year prior prison term enhancement for the 2003 robbery conviction. We agree.

Section 667, subdivision (a), provides for an enhancement of five years when a prior conviction qualifies as a "serious felony." Section 667.5, subdivision (b), provides for a one-year enhancement if a prior conviction resulted in a prison sentence. In *People v. Jones* (1993) 5 Cal.4th 1142, at pages 1150 through 1152, the California Supreme Court held only the greater term of enhancement can be applied when the same prior offense qualifies as a "serious felony" under section 667, subdivision (a), and resulted in a prior prison term under section 667.5, subdivision (b).

Therefore, defendant correctly contends the trial court's use of his prior single conviction for robbery to enhance his sentence by five years under section 667, subdivision (a), and then again to enhance his sentence another year under section 667.5, contravenes the California Supreme Court's decision in *Jones, supra*, 5 Cal.4th at pages 1150 through 1152.

Notwithstanding, the People contend that *Jones, supra*, 5 Cal.4th 1142, does not apply in this case because *Jones* was decided before the enactment of the "Three Strikes" law, and the issue should be reconsidered in light of the purposes of the Three Strikes law. However, the *Jones* decision is directly on point, and we are bound by its holding. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Based on the above, we agree with defendant that the trial court erred in imposing multiple enhancements for the same prior robbery conviction.

IV

DISPOSITION

The case is remanded to the trial court with directions to strike the one-year enhancement imposed under section 667.5, as a result of defendant's prior robbery conviction, to correct the abstract of judgment and to forward certified copies of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment and sentence are affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Miller
J.